IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2059 of 2007 (M/S)

1. Vinod Kumar S/O Rati Ram,
2. Smt. Meenu W/O Vinod Kumar, Both resident of Gali No. 16, Krishna Nagar, Roorkee, District Haridwar.

…… Petitioners.

Versus

1. Branch Manager, State Bank of Patiala, Shiv Complex Roorkee-50615 District Haridwar.
2. Chief Manager (Advances), Regional III (D) Authorised Officer, 21 Vidhan Sabha Marg, Lucknow-226001 (U.P.).

… Respondents.

Sri Abdul Wahid, learned counsel for the petitioners.
Sri K.K. Sah, learned counsel for the respondents-Bank.

Date October 23, 2007.
Hon'ble B.S. Verma, J.

This writ petition has been filed to issue a writ, order or direction in the nature of certiorari quashing the Public Auction Notice dated 19-9-2007 issued by the respondent no. 2 (Annexure No.5). Prayer for mandamus of this Court has also been made to direct the respondents to make easy instalments of the due amount.

Learned counsel for the respondents-Bank has submitted that the writ petition is not maintainable because the petitioners had alternate remedy of statutory appeal under Section 17 of the Debt Recovery Tribunal. Learned counsel for the Bank has relied upon the Division Bench judgment of this Court in the case of Smt. Alpana Shankar Vs. Union Bank of India and another reported in 2005 (1) U.D., 692. In paragraph no.6, it has been observed as under:-

"6. Admittedly, the petitioner was given notice under Section 13 (2) of the Securitisation and Reconstruction of Finanacial

Assets and Enforcement of Security Interest Act, 2002. If the petitioner failed to discharge the liabilities within sixty days, the respondent Bank is entitled to take recourse to one or more of the measures mentioned under section 13(4) of the said Act to recover the secured debt. If the petitioner is aggrieved by any such action taken by the Bank under Section 13(4) of the Act, the petitioner has a right of appeal to the Debt Recovery Tribunal under section 17 of the said Act. From the averments made in the writ petition, it is not clear whether the respondents have taken any action under Section 13 (4) the Act. If any such action has already been taken or as and when such action is taken, the petitioner can approach the Debt Recovery Tribunal under Section 17 of the Act for redressal of her grievance. For this reason also, this Court cannot interfere in the matter in exercise of the power under Article 226 of the Constitution of India. Unless there are extreme and compelling circumstances, the High Court cannot exercise jurisdiction under Article 226 of the Constitution of India when the party has got an effective alternate remedy available under the Statute. The petitioner has not made out any such extreme and compelling circumstance to persuade this Court to exercise the jurisdiction under Article 226 of the Constitution of India."

An effective alternate remedy of filing statutory appeal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the Act) is available to the petitioners. Hence I am not inclined to entertain the writ petition.

The writ petition is dismissed in limine. No order as to costs. However, the petitioners may file an appeal as has been provided under Section 17 of the Act, if so advised.

(B.S. Verma. J.)

RCP